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Attorneys for Plaintiff Jonathan D. Aaberg

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

<p>Jonathan D. Aaberg,</p> <p>Plaintiff,</p> <p>v.</p> <p>Portfolio Recovery Associates, LLC and Hunt & Henriques, Attorneys At Law,</p> <p>Defendants.</p>	<p>Case No: _____</p> <p>Complaint For Damages</p> <p>Jury Trial Demanded</p>
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INTRODUCTION

- The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter “FDCPA”), to eliminate abusive debt collection practices by debt collectors,

1 to insure that those debt collectors who refrain from using abusive debt
2 collection practices are not competitively disadvantaged, and to promote
3 consistent State action to protect consumers against debt collection abuses.

4 2. The California legislature has determined that the banking and credit system
5 and grantors of credit to consumers are dependent upon the collection of just
6 and owing debts and that unfair or deceptive collection practices undermine
7 the public confidence that is essential to the continued functioning of the
8 banking and credit system and sound extensions of credit to consumers. The
9 Legislature has further determined that there is a need to ensure that debt
10 collectors exercise this responsibility with fairness, honesty and due regard
11 for the debtor's rights and that debt collectors must be prohibited from
12 engaging in unfair or deceptive acts or practices.

13 3. Jonathan D. Aaberg, ("Plaintiff"), through Plaintiff's attorneys, brings this
14 action to challenge the actions of Portfolio Recovery Associates, LLC
15 ("Portfolio") and Hunt and Henriques, Attorneys At Law, ("Hunt"),
16 collectively, ("Defendants"), with regard to attempts by Defendants to
17 unlawfully and abusively collect a debt allegedly owed by Plaintiff, and this
18 conduct caused Plaintiff damages.

19 4. Plaintiff makes these allegations on information and belief, with the exception
20 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which
21 Plaintiff alleges on personal knowledge.

22 5. While many violations are described below with specificity, this Complaint
23 alleges violations of the statutes cited in their entirety.

24 6. Unless otherwise stated, all the conduct engaged in by Defendants took place
25 in California.

26 7. Any violations by Defendants were knowing, willful, and intentional, and
27 Defendants did not maintain procedures reasonably adapted to avoid any such
28 violation.

JURISDICTION AND VENUE

8. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.

9. This action arises out of Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 ("Rosenthal Act").

10. Plaintiff is a natural person who resides in the City of San Francisco, County of San Francisco, State of California.

11. Plaintiff resides in San Francisco County, as defined by 28 U.S.C. § 1391c(1), the judicial district in which this lawsuit is brought.

12. At the time of the substantial part of the events or omissions giving rise to the claim occurred, specifically, Defendants' contacting Plaintiff after Defendants were placed on notice that Plaintiff was represented by current counsel, Plaintiff was physically located in the City of San Francisco, County of San Francisco, State of California.

13. Because a substantial part of the events or omissions giving rise to the claim occurred in San Francisco County, venue is proper pursuant to 28 U.S.C. § 1391b(2).

14. At all times relevant, Defendant conducted business within the State of California.

PARTIES

15. Plaintiff is a natural person who resides in the City of San Francisco, State of California.

16. Hunt is located in the City of San Jose, in the State of California.

17. Portfolio is located in the City of Norfolk, in the State of Virginia.

18. Plaintiff is obligated or allegedly obligated to pay a debt, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

19. Defendants are persons who uses an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and are therefore debt collectors as that phrase is defined by 15 U.S.C. § 1692a(6).
20. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a “debtor” as that term is defined by California Civil Code § 1788.2(h).
21. Defendants, in the ordinary course of business, regularly, on behalf of himself, herself, or others, engages in debt collection as that term is defined by California Civil Code § 1788.2(b), and are therefore debt collectors as that term is defined by California Civil Code § 1788.2(c).
22. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a consumer debt and “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

FACTUAL ALLEGATIONS

23. Sometime before February 18, 2014, Plaintiff is alleged to have incurred certain financial obligations.
24. These financial obligations were primarily for personal, family or household purposes and are therefore a “debt” as that term is defined by 15 U.S.C. §1692a(5).
25. These alleged obligations were money, property, or their equivalent, which is due or owing, or alleged to be due or owing, from a natural person to another person and are therefore a “debt” as that term is defined by California Civil Code §1788.2(d), and a “consumer debt” as that term is defined by California Civil Code §1788.2(f).

26. Sometime thereafter, but before February 18, 2014, Plaintiff allegedly fell behind in the payments allegedly owed on an alleged debt to. Plaintiff currently takes no position as to the validity of this alleged debt.

27. Subsequently, on February 18, 2014, Hunt, on behalf of Portfolio, filed a collections lawsuit against Plaintiff in the Superior Court of San Francisco, Case Number CGC-14-537514.

28. Subsequently, Plaintiff retained counsel, whom promptly filed Plaintiff's answer with the Superior Court of San Francisco on March 10, 2014 and informed Defendants of Plaintiff's representation.

29. On March 10, 2014, Plaintiff's also counsel mailed Plaintiff's Answer, Request for Production of Documents, Request for Admissions and Request for Interrogatories to Defendants.

30. On March 18, 2014, the Superior Court of San Francisco provided Plaintiff's counsel notice that the Court had received Plaintiff's Answer.

31. On or about March 27, 2014, Defendants mailed correspondence to Plaintiff at Plaintiff's home address for the purpose of collecting the debt. A few days later, Plaintiff received Defendants' mailed correspondence.

32. Through this conduct, and without exception, Defendants' communicated with a person other than the consumer for the purported purpose of acquiring location information after the Defendants' knew the consumer was represented by an attorney with regard to the subject debt and had knowledge of, or could have readily ascertain, said attorney's name and address. Consequently, Defendants' violated 15 U.S.C. § 1692b(6).

33. Because Defendants' conduct violated certain portions of the federal Fair Debt Collection Practices Act as these portions are incorporated by reference in the Rosenthal Fair Debt Collection Practices Act, through California Civil Code § 1788.17, this conduct or omission violated Cal. Civ. Code § 1788.17.

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CAUSES OF ACTION**COUNT I****FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)****15 U.S.C. §§ 1692 ET SEQ.**

34. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

35. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

36. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from Defendants.

COUNT II**ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (ROSENTHAL ACT)****CAL. CIV. CODE §§ 1788-1788.32**

37. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

38. The foregoing acts and omissions constitute numerous and multiple violations of the Rosenthal Act, including but not limited to each and every one of the above-cited provisions of the Rosenthal Act, Cal. Civ. Code §§ 1788-1788.32

39. As a result of each and every violation of the Rosenthal Act, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendants, and Plaintiff be awarded damages from Defendants, as follows:

- An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3);
- An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
- An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

40. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully submitted,

HYDE & SWIGART

Date: April 25, 2014

By: s/Crosby S. Connolly
Crosby S. Connolly
Attorneys for Plaintiff